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07-42

No. ~~07-0024~~

In The

Supreme Court of the United States

ALEKSANDR J. STOYANOV and
YURI J. STOYANOV,

Petitioners

v.

DEPARTMENT OF THE NAVY and
MERIT SYSTEMS PROTECTION BOARD,

Respondents.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Federal Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioners present the following question for rehearing of an order denying a petition for a writ of certiorari limited to the scope of the Whistleblower Protection Act (WPA) and the controlling effect of an important question of federal law:

Whether alleged disclosures of a violation of any law, rule, or regulation satisfy the MSPB's jurisdiction regardless of the restriction to context, motive, or setting of the disclosure?

The Appeals Court for the Federal Circuit made contradictory findings in the decisions related to the Board's jurisdiction. In *Stoyanov v. Merit Systems Protection Board,* the Appeals Court decision characterized lack of jurisdiction because Petitioner's "purported disclosures involved anything other than matter related to EEO activities" and affirmed the Board's decision. See Appendix to the petition for a writ of certiorari p. A8. However, in *Stoyanov v. Navy*, the Appeals Court decision implied that Petitioners' IRA appeal satisfied the Board's jurisdiction because "[t]he alleged whistleblowing activities include Stoyanov's reporting alleged violations of EEOC laws and regulations by the agency as well as the agency's failure to enforce a March 2005 EEOC Order" and did not characterize lack of jurisdiction on such bases. *Id* p. A12. The Petitioner's IRA appeal in the MSPB case made non-frivolous allegations of prohibited personnel actions and disclosures of wrongdoing to persons who may be in a position to act to remedy the violations of laws and the Navy policy of zero tolerance to discrimination. However, the MSPB administrative judge dismissed Petitioner's IRA appeals for lack of

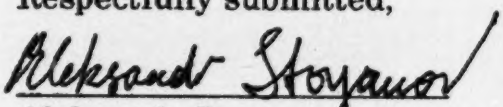
jurisdiction contrary to the plain text of the WPA statute clearly prohibiting retaliation for disclosing violation of any law, rule or regulation. The MSPB narrow interpretation of the remedial legislation authorizing IRA appeals under the WPA and evidently contradictory decisions by the appeals court call for an exercise of this Court's supervisory power to decide and settle the important question of federal law.

The WPA statute extends protection for "any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences -- (i) a violation of any law, rule, or regulation,..." to trigger the protection of the Act. 5 U.S.C. § 2302(b)(8)(A) (emphasis added). *Id* at p. A42. In *Huffman v. Office of Personnel Management, 23 F.3d 1342, 1350, (Fed. Cir. 2001),* the appeals court noted that Congress criticized the Board for continuing to take a narrow view of what constitutes a protected disclosure by quoting the House report for the 1994 amendment that stated: "Perhaps the most troubling precedents involve the Board's inability to understand that 'any' means 'any.' The WPA protects 'any' disclosure evidencing a reasonable belief of specified misconduct, a cornerstone to which the MSPB remains blind." The 1994 Senate Committee Report also stated in part: "the plain language of the Whistleblower Protection Act extends to retaliation for 'any disclosure', regardless of the setting of the disclosure, the form of the disclosure, or the person to whom the disclosure is made." *Id.* However, the Appeals Court held that "[t]hese post-enactment statements made in the legislative history of the 1994 amendment have no

bearing on our determination of the legislative intent of the drafters of the 1978 and 1989 legislation... thus leaving the matter for judicial resolution under the existing language of the Act." *Id.* As a result of the Board's narrow interpretations of facts and law, Petitioner's IRA appeals were dismissed without considering the merits of the claims while the nature and specificity of the Petitioner's allegations should have placed the MSPB administrative judge on notice that the Petitioner raised valid claims in the IRA appeals. It is well established that the WPA, which authorized the filing of IRA appeals, is a remedial legislation that should embrace all cases fairly within the scope of extended protection for any disclosure of a violation of any law, rule, or regulation. Consequently, Petitioners respectfully request the Court to exercise this Court's supervisory power to settle interpretation of federal law and grant rehearing of an order denying petition for a writ of certiorari.

Wherefore, in consideration of the above, the petition for a writ of certiorari should be granted to decide and settle the important question of federal law.

Respectfully submitted,



Aleksandr Stoyanov

CERTIFICATE OF COMPLIANCE WITH THE REQUIREMENTS

1. This Petition for Rehearing complies with the Supreme Court Rule 44 (1) that it is presented in good faith and not for delay.

2. This Petition for Rehearing contains less than 700 words, excluding the parts of the petition exempted by the Rules.

3. This Petition for Rehearing complies with the Rule 44 (2) that it is restricted to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

Aleksandr Stoyanov

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